

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN ASSEMBLY MAY 8, 2014

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2188**

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**Introduced by Assembly Member Muratsuchi**

February 20, 2014

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An act to amend Section 714 of the Civil Code, and to amend Section 65850.5 of the Government Code, relating to solar energy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2188, as amended, Muratsuchi. Solar energy: permits.

(1) Existing law provides that it is the policy of the state to promote and encourage the use of solar energy systems, as defined, and to limit obstacles to their use. Existing law states that the implementation of consistent statewide standards to achieve timely and cost-effective installation of solar energy systems is not a municipal affair, but is instead a matter of statewide concern. Existing law requires a city or county to administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Existing law requires a solar energy system for heating water to be certified by the Solar Rating Certification Corporation or another nationally recognized certification agency.

This bill would specify that these provisions address a statewide concern. The bill would additionally require a city, county, or city and county to adopt, on or before September 30, 2015, *in consultation with*

*specified public entities* an ordinance that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems, as specified. The bill would additionally require a city, county, or city and county to inspect a small residential rooftop solar energy system eligible for expedited review within 5 business days of any request, as specified, and to perform only one inspection, *except* as specified. The bill would prohibit a city, county, or city and county from conditioning the approval of any solar energy system permit on approval of that system by an association that manages a common interest development. The bill would require a solar energy system for heating water to be certified by an accredited listing agency, as defined.

*Because the bill would impose new duties upon local governments and local agencies, it would impose a state-mandated local program.*

(2) Existing law prohibits any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document from effectively prohibiting or restricting the installation or use of a solar energy system. Existing law exempts from that prohibition provisions that impose reasonable restrictions on a solar energy system that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance. Existing law defines the term “significantly,” for these purposes, with regard to solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, to mean an amount exceeding 20% of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20%, and with regard to photovoltaic systems that comply with state and federal law, an amount not to exceed \$2,000 over the system cost or a decrease in system efficiency of an amount exceeding 20%, as specified. Existing law requires a solar energy system for heating water subject to the provisions described above to be certified by the Solar Rating Certification Corporation or another nationally recognized certification agency.

This bill would instead define the term “significantly,” for these purposes, with regard to solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, to mean an amount exceeding 10% of the cost of the system, not to exceed \$1,000, or decreasing the efficiency of the solar energy system by an amount exceeding 10%, and with regard to photovoltaic systems that comply with state and federal law, an amount not to exceed \$1,000

over the system cost or a decrease in system efficiency of an amount exceeding 10%, as specified. The bill would require a solar energy system for heating water subject to the provisions described above to be certified by an accredited listing agency, as defined.

(3) Existing law requires an application for approval for the installation or use of a solar energy system to be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property and prohibits the approver from willfully avoiding or delaying approval. Existing law requires the approving entity to notify the applicant in writing within 60 days of receipt of the application if the application is denied, as specified.

The bill would instead require the approving entity to notify the applicant in writing within ~~30~~ 45 days of receipt of the application if the application is denied, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In recent years, the state has both encouraged the
- 4 development of innovative distributed generation technology and
- 5 prioritized the widespread adoption of solar power as a renewable
- 6 energy resource through programs such as the California Solar
- 7 Initiative.
- 8 (b) Rooftop solar energy is a leading renewable energy
- 9 technology that will help this state reach its energy and
- 10 environmental goals.
- 11 (c) To reach the state's Million Solar Roofs goal, hundreds of
- 12 thousands of additional rooftop solar energy systems will need to
- 13 be deployed in the coming years.
- 14 (d) Various studies, including one by the Lawrence Berkeley
- 15 National Laboratory, show that, despite the 1978 California Solar

1 Rights Act, declaring that the “implementation of consistent  
2 statewide standards to achieve the timely and cost-effective  
3 installation of solar energy systems is not a municipal affair ... but  
4 is instead a matter of statewide concern,” the permitting process  
5 governing the installation of rooftop solar energy systems varies  
6 widely across jurisdictions and, contrary to the intent of the law,  
7 is both an “obstacle” to the state’s clean energy and greenhouse  
8 reduction goals and a “burdensome cost” to homeowners,  
9 businesses, schools, and public agencies.

10 (e) The United States Department of Energy, through its SunShot  
11 Initiative, has distributed millions of dollars in grants to local and  
12 state governments, including California jurisdictions, and nonprofit  
13 organizations to reduce the costs of distributed solar through  
14 streamlined and standardized permitting.

15 (f) A modernized and standardized permitting process for  
16 installations of small-scale solar distributed generation technology  
17 on residential rooftops will increase the deployment of solar  
18 distributed generation, help to expand access to lower income  
19 households, provide solar customers greater installation ease,  
20 improve the state’s ability to reach its clean energy goals, and  
21 generate much needed jobs in the state, all while maintaining safety  
22 standards.

23 SEC. 2. Section 714 of the Civil Code is amended to read:

24 714. (a) Any covenant, restriction, or condition contained in  
25 any deed, contract, security instrument, or other instrument  
26 affecting the transfer or sale of, or any interest in, real property,  
27 and any provision of a governing document, as defined in Section  
28 4150 or 6552, that effectively prohibits or restricts the installation  
29 or use of a solar energy system is void and unenforceable.

30 (b) This section does not apply to provisions that impose  
31 reasonable restrictions on solar energy systems. However, it is the  
32 policy of the state to promote and encourage the use of solar energy  
33 systems and to remove obstacles thereto. Accordingly, reasonable  
34 restrictions on a solar energy system are those restrictions that do  
35 not significantly increase the cost of the system or significantly  
36 decrease its efficiency or specified performance, or that allow for  
37 an alternative system of comparable cost, efficiency, and energy  
38 conservation benefits.

39 (c) (1) A solar energy system shall meet applicable health and  
40 safety standards and requirements imposed by state and local

1 permitting authorities, consistent with Section 65850.5 of the  
2 Government Code.

3 (2) Every solar energy system for heating water shall be certified  
4 by an accredited listing agency as defined in Section 65850.5 of  
5 the Government Code.

6 (3) A solar energy system for producing electricity shall also  
7 meet all applicable safety and performance standards established  
8 by the National Electrical Code, the Institute of Electrical and  
9 Electronics Engineers, and accredited testing laboratories such as  
10 Underwriters Laboratories and, where applicable, rules of the  
11 Public Utilities Commission regarding safety and reliability.

12 (d) For the purposes of this section:

13 (1) (A) For solar domestic water heating systems or solar  
14 swimming pool heating systems that comply with state and federal  
15 law, “significantly” means an amount exceeding 10 percent of the  
16 cost of the system, but in no case more than one thousand dollars  
17 (\$1,000), or decreasing the efficiency of the solar energy system  
18 by an amount exceeding 10 percent, as originally specified and  
19 proposed.

20 (B) For photovoltaic systems that comply with state and federal  
21 law, “significantly” means an amount not to exceed one thousand  
22 dollars (\$1,000) over the system cost as originally specified and  
23 proposed, or a decrease in system efficiency of an amount  
24 exceeding 10 percent as originally specified and proposed.

25 (2) “Solar energy system” has the same meaning as defined in  
26 paragraphs (1) and (2) of subdivision (a) of Section 801.5.

27 (e) (1) Whenever approval is required for the installation or  
28 use of a solar energy system, the application for approval shall be  
29 processed and approved by the appropriate approving entity in the  
30 same manner as an application for approval of an architectural  
31 modification to the property, and shall not be willfully avoided or  
32 delayed.

33 (2) For an approving entity that is an association, as defined in  
34 Section 4080 or 6528, and that is not a public entity, both of the  
35 following shall apply:

36 (A) The approval or denial of an application shall be in writing.

37 (B) If an application is not denied in writing within ~~30~~ 45 days  
38 from the date of receipt of the application, the application shall be  
39 deemed approved, unless that delay is the result of a reasonable  
40 request for additional information.

1 (f) Any entity, other than a public entity, that willfully violates  
2 this section shall be liable to the applicant or other party for actual  
3 damages occasioned thereby, and shall pay a civil penalty to the  
4 applicant or other party in an amount not to exceed one thousand  
5 dollars (\$1,000).

6 (g) In any action to enforce compliance with this section, the  
7 prevailing party shall be awarded reasonable attorney's fees.

8 (h) (1) A public entity that fails to comply with this section  
9 may not receive funds from a state-sponsored grant or loan program  
10 for solar energy. A public entity shall certify its compliance with  
11 the requirements of this section when applying for funds from a  
12 state-sponsored grant or loan program.

13 (2) A local public entity may not exempt residents in its  
14 jurisdiction from the requirements of this section.

15 SEC. 3. Section 65850.5 of the Government Code is amended  
16 to read:

17 65850.5. (a) The implementation of consistent statewide  
18 standards to achieve the timely and cost-effective installation of  
19 solar energy systems is not a municipal affair, as that term is used  
20 in Section 5 of Article XI of the California Constitution, but is  
21 instead a matter of statewide concern. It is the intent of the  
22 Legislature that local agencies not adopt ordinances that create  
23 unreasonable barriers to the installation of solar energy systems,  
24 including, but not limited to, design review for aesthetic purposes,  
25 and not unreasonably restrict the ability of homeowners and  
26 agricultural and business concerns to install solar energy systems.  
27 It is the policy of the state to promote and encourage the use of  
28 solar energy systems and to limit obstacles to their use. It is the  
29 intent of the Legislature that local agencies comply not only with  
30 the language of this section, but also the legislative intent to  
31 encourage the installation of solar energy systems by removing  
32 obstacles to, and minimizing costs of, permitting for such systems.

33 (b) A city or county shall administratively approve applications  
34 to install solar energy systems through the issuance of a building  
35 permit or similar nondiscretionary permit. Review of the  
36 application to install a solar energy system shall be limited to the  
37 building official's review of whether it meets all health and safety  
38 requirements of local, state, and federal law. The requirements of  
39 local law shall be limited to those standards and regulations  
40 necessary to ensure that the solar energy system will not have a

1 specific, adverse impact upon the public health or safety. However,  
2 if the building official of the city or county makes a finding, based  
3 on substantial evidence, that the solar energy system could have  
4 a specific, adverse impact upon the public health and safety, the  
5 city or county may require the applicant to apply for a use permit.

6 (c) A city, county, or city and county may not deny an  
7 application for a use permit to install a solar energy system unless  
8 it makes written findings based upon substantial evidence in the  
9 record that the proposed installation would have a specific, adverse  
10 impact upon the public health or safety, and there is no feasible  
11 method to satisfactorily mitigate or avoid the specific, adverse  
12 impact. The findings shall include the basis for the rejection of  
13 potential feasible alternatives of preventing the adverse impact.

14 (d) The decision of the building official pursuant to subdivisions  
15 (b) and (c) may be appealed to the planning commission of the  
16 city, county, or city and county.

17 (e) Any conditions imposed on an application to install a solar  
18 energy system shall be designed to mitigate the specific, adverse  
19 impact upon the public health and safety at the lowest cost possible.

20 (f) (1) A solar energy system shall meet applicable health and  
21 safety standards and requirements imposed by state and local  
22 permitting authorities.

23 (2) Every solar energy system for heating water shall be certified  
24 by an accredited listing agency.

25 (3) A solar energy system for producing electricity shall meet  
26 all applicable safety and performance standards established by the  
27 National Electrical Code, the Institute of Electrical and Electronics  
28 Engineers, and accredited testing laboratories such as Underwriters  
29 Laboratories and, where applicable, rules of the Public Utilities  
30 Commission regarding safety and reliability.

31 (g) On or before September 30, 2015, every city, county, or city  
32 ~~and county~~ *county, in consultation with the local fire department*  
33 *or district and the utility director; if the city, county, or city and*  
34 *county operates a utility*, shall adopt an ordinance, consistent with  
35 the goals and intent of subdivision (a), that creates an expedited,  
36 streamlined permitting process for small residential rooftop solar  
37 energy systems. In developing an expedited permitting process,  
38 the city, county, or city and county shall adopt a checklist of all  
39 requirements with which small rooftop solar energy systems shall  
40 comply to be eligible for expedited review. An application that

1 ~~meet the~~ *satisfies the information* requirements in the ~~checklist~~  
2 *checklist, as determined by the city, county, and city and county,*  
3 ~~shall be deemed approved upon receipt of the completed~~  
4 ~~application submittal.~~ *complete. Upon confirmation by the city,*  
5 *county, or city and county of the application and supporting*  
6 *documents being complete and meeting the requirements of the*  
7 *checklist, a city, county, or city and county shall, consistent with*  
8 *subdivision (b), approve the application and issue all required*  
9 *permits or authorizations. Upon receipt of an incomplete*  
10 *application, a city, county, or city and county shall issue a written*  
11 *correction notice detailing all deficiencies in the application and*  
12 *any additional information required to be eligible for expedited*  
13 *permit issuance. The checklist and required permitting*  
14 *documentation shall be published on a publically accessible Internet*  
15 *Web-site site, if the city, county, or city and county has an Internet*  
16 *Web site, and the city, county, or city and county shall allow for*  
17 *electronic submittal of a permit application and associated*  
18 *documentation, and shall authorize the electronic signature on all*  
19 *forms, applications, and other documentation in lieu of a wet*  
20 *signature by an applicant. In developing the ordinance, the city,*  
21 *county, or city and county shall strive to conform with standardized*  
22 *checklists based on existing statewide solar permitting guidelines*  
23 *or best practices including those developed through the United*  
24 *States Department of Energy's SunShot Initiative.*

25 (h) For a small residential rooftop solar energy system eligible  
26 for expedited review, only one inspection shall be required and  
27 that one inspection shall be scheduled within five business days  
28 of a request, if the request is received during business hours. If the  
29 request is received after business hours, the inspection shall be  
30 scheduled within five business days of the beginning of the next  
31 business day after receipt of the request. If a city, county, or city  
32 and county determines that it is unable to provide an inspection  
33 within five business days of a request, the city, county, or city and  
34 county may hold a public hearing and adopt an ordinance or  
35 resolution providing for a different time period or different means  
36 for scheduling inspections. ~~If the small residential rooftop solar~~  
37 ~~energy system fails inspection, a subsequent inspection shall also~~  
38 ~~conform to the requirements of this subdivision.~~

39 (i) A city, county, or city and county shall not condition approval  
40 for any solar energy system permit on the approval of a solar



1 energy system by an association, as that term is defined in Section  
2 4080 of the Civil Code.

3 (j) The following definitions apply to this section:

4 (1) “A feasible method to satisfactorily mitigate or avoid the  
5 specific, adverse impact” includes, but is not limited to, any  
6 cost-effective method, condition, or mitigation imposed by a city,  
7 county, or city and county on another similarly situated application  
8 in a prior successful application for a permit. A city, county, or  
9 city and county shall use its best efforts to ensure that the selected  
10 method, condition, or mitigation meets the conditions of  
11 subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of  
12 Section 714 of the Civil Code.

13 (2) “Accredited listing agency” means a standards or testing  
14 organization that evaluates solar energy systems according to  
15 specified, independent criteria and allows its mark to be used on  
16 qualifying systems as a stamp of approval, such as the American  
17 National Standards Institute or the American Association for  
18 Laboratory Accreditation.

19 (3) “Electronic submittal” means the utilization-~~any~~ *of one or*  
20 *more* of the following:

21 (A) Email.

22 (B) The Internet.

23 (C) Facsimile.

24 (4) “Small residential solar energy system” means all of the  
25 following:

26 (A) A solar energy system that is no larger than 10 kilowatts  
27 alternating current nameplate rating or 30 kilowatts thermal.

28 (B) A solar energy system that conforms to all applicable state  
29 fire, structural, electrical, and other building codes as adopted or  
30 amended by the city, county, or city and county and paragraph (3)  
31 of subdivision (c) of Section 714 of the Civil Code.

32 (C) A solar energy system that is installed on a single or duplex  
33 family dwelling.

34 (D) A solar panel or module array that does not exceed the  
35 maximum legal building height.

36 (5) “Solar energy system” has the same meaning set forth in  
37 paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the  
38 Civil Code.

39 (6) “Specific, adverse impact” means a significant, quantifiable,  
40 direct, and unavoidable impact, based on objective, identified, and

1 written public health or safety standards, policies, or conditions  
2 as they existed on the date the application was deemed complete.  
3 SEC. 4. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 a local agency or school district has the authority to levy service  
6 charges, fees, or assessments sufficient to pay for the program or  
7 level of service mandated by this act, within the meaning of Section  
8 17556 of the Government Code.

O